

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4475 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MAQSUD @ PAPPU @ C. HAMIDBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/11/1999

ORAL JUDGEMENT

1. The petitioner is a detainee who has been detained by virtue of an order passed by the District Magistrate, Valsad in exercise of powers u/s 3[2] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act' for short]. The petitioner came to be detained on the ground that he is a dangerous person as defined u/s 2[c] of the PASA Act. That he is involved and booked for about 15

offences punishable under various sections of IPC. The detaining authority considered the statements of three witnesses who claimed to have witnessed certain incidents involving the petitioner which resulted into disruption of public order. The detaining authority, therefore, concluded that the petitioner is a dangerous person. He is involved in number of offences, resorting to general law has not helped as he gets bailed out and indulges into his illegal activities and therefore, detention under the PASA Act is necessary.

2. The petitioner has challenged the detention on various grounds in the petition. Mr. Thakkar, learned Advocate appearing for the petitioner however has restricted his arguments to the fact that the detainee was in custody when the detention order came to be passed. The authority has not considered this aspect at all and has passed the order in question. According to Mr. Thakkar, it reflects total non-application of mind. The authority has not considered as to how the petitioner could have pursued his illegal activities while in custody and the authority has also failed to consider the alternative less drastic remedy in the nature of opposing the bail application and/or of getting bail cancelled, in event it is granted. The order therefore suffers from the defect of non-application of mind and the same may be quashed and set aside by allowing the petition.

3. The petition is opposed on behalf of respondents by Mr. H.H.Patel, learned AGP. He states that the petitioner is detained by the detaining authority after recording a subjective satisfaction. As many as 15 offences are registered against him and many more have gone unregistered out of his fear as the witnesses are not prepared to approach the authorities. He however conceded that the detaining authority has not considered the factum of the petitioner being in custody when the order came to be passed.

4. On going through the grounds of detention, it is apparent that the detaining authority was probably oblivious of the fact that the detainee is in custody. It was therefore expected of the authority to consider whether the detainee could have pursued his illegal activities while in custody. The necessary presumption is that he could not have pursued his activities. In that event, there was no need to resorting to the remedy of provision under the PASA Act. If the detainee applied for bail, the detaining authority could have considered the possibility of opposing the bail. That aspect is also not considered. While resorting to drastic remedy

of detention under the PASA Act, the authority is expected to consider the possibility of resorting to less drastic remedies. The detaining authority has not considered these aspects which can be said to be less drastic than the detention.

5. The detainee was in custody when the order was passed and the detaining authority failed to record reasons for resorting to the remedy of detention as it can be presumed that the detainee could not have pursued his illegal activities while in custody. In fact, the possibility of detainee getting bailed out was nonexistent till application for bail is made by him [AIR 1989 SC 2265 in case of Abdul Razak Abdul Wahab Shaikh v/s Commissioner of Police, Ahmedabad & ors.]. This reflects clear non-application of mind and the order would therefore be vitiated.

6. In view of above, the petition is allowed. The impugned order of detention passed by the District Magistrate, Valsad on 23/2/1999 in respect of the petitioner Maqsud @ Pappu @ C. Hamidbhai Shaikh, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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